2011

Renee Spall-Goldsmith v. Willard Leroy Goldsmith IV: Unknown

Utah Court of Appeals

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IN THE COURT OF APPEALS

STATE OF UTAH

RENEE SPALL-GOLDSMITH, Petitioner/Appellee, vs. WILLARD LEROY GOLDSMITH IV, Respondent/Appellant.	Appellate Case No. 20110628 [District Court Case No. 084300172] [Trial Judge: STEPHEN L. HENRIOD] [Judge's Decision Appealed from: Honorable ROBERT ADKINS]

Appeal from the Judgment and Findings of Fact and Conclusions of Law
on Bifurcated Decree of Divorce entered June 20, 2009
by the Honorable ROBERT ADKINS

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

1. JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to *Utah Code Ann.* 78A-4-103(2)(h) in that this appeal arises from the final judgment of the District Court, the Honorable Stephen L. Henriod presiding, which involved a domestic relations resolving all matters, including custody and parent-time, after a Bifurcated Divorce Decree. Although the Honorable Stephen L. Henriod stated his decision and Judgment on the record, he subsequently left the bench and Judge Henriod's statements relating to custody and child support calculations were thereafter interpreted by the Honorable Robert Adkins, which has resulted in this appeal.

2. STATEMENT OF ISSUES AND STANDARD OF REVIEW

ISSUE # 1: Did the District Court err in awarding child support pursuant to the Utah Child Support Guidelines by employing the Sole Custody Worksheet to calculate the amount of base child support rather than the Joint Custody Worksheet?

DETERMINATIVE LAW: Utah Code Ann. 78B-12-102(14); ***Udy v. Udy*, 893 P.2d 1097 (Utah App. 1995).** The *Udy* court held that "Although labeled 'sole custody,' the trial court awarded Mr. Udy visitation that exceeded the threshold for joint physical custody .... Thus, the court **must** follow the mandate of Utah's child support guidelines, **and use the joint custody child support worksheet or make findings of fact justifying its deviation**." *Udy v. Udy, supra*, at 1099 [emphases added].

STANDARD OF REVIEW: "We have consistently held that the proper interpretation of a statute is a question of law that should be reviewed for correctness." *State v. Barrett*, 2005 UT 88, ¶ 14, 127 P.3d 682, 686.

3. STATUTORY PROVISIONS

Utah Code Ann. §78B-12-102(14) states:

> "'Joint physical custody' means the child stays with each parent overnight for more than 30% of the year, and both parents

contribute to the expenses of the child in addition to paying child support."

4. STATEMENT OF CASE

This case involves a dispute over the calculation of child support. Respondent/Appellant (hereinafter Father) contends that the Joint Physical Custody Worksheet should be used in calculating child support due to the fact that he was awarded approximately 160 overnights with the minor child and Petitioner/Appellee (hereinafter Mother) argues that the Sole Custody Worksheet should be used merely because Judge Henriod awarded her "physical custody."

5. STATEMENT OF FACTS

At trial before the Honorable Stephen L. Henriod on July 8, 2010, the court found that it would be in the best interest of the parties' minor child that Mother have "physical custody" of the minor child. The court further found that it would be in the best interest of the minor child that the parties share "Joint Legal Custody" of the minor child. Father was awarded parent-time with the parties' minor child in an amount equal to approximately 160 overnights per year. The court made findings regarding the income of each party, but did not calculate the child support to be ordered. Father's attorney was ordered to prepare the Findings of Fact and Conclusions of Law as well as the final Decree of Divorce.

Pursuant to the parent-time Order, Father's counsel calculated child support using the Joint Custody Worksheet of the Utah Child Support Guideline. Mother's counsel objected, asserting that sole physical custody was awarded to Mother based on Judge Henriod's verbiage "physical custody".

Due to the retirement of Judge Henriod, the Honorable Robert Adkins was assigned to the case. Judge Adkins held a telephonic conference on May 23, 2011 with counsel for both Mother and Father. After argument by counsel, the court held that the base amount of child support would be assessed pursuant to the Sole Custody Worksheet.

6. SUMMARY OF ARGUMENT

Father contends terms and verbiage do not control the manner in which child support is calculated but that the statutory manner in which child support is calculated is determined by the number of overnights that each parent is awarded. Even if an error in terminology is made, the counting of the overnights is what is important and what determines whether the Sole Physical Custody Worksheet is used or whether the Joint Physical Custody Worksheet is used.

The term "physical custody" is vague and gives absolutely no guidance regarding the manner in which one should calculate child support. To determine which Worksheet to use, one is required to ascertain the number of overnights that each parent has been awarded by the court. Other terms such as "primary custodial parent" which is used extensively in Utah does not convey an absolute awareness of whether the "primary custodial parent" has Sole Physical Custody or whether the "primary custodial parent" shares Joint Physical Custody.

As will be seen and established hereinafter, the law and the facts of this case clearly and categorically result in the conclusion that the term "physical custody" as used by Judge Henriod meant "primary custodial parent" and nothing more. Mother is erroneously contending that the use of these terms results in a Sole Physical Custody Order by Judge Henriod.

7. ARGUMENT

Child support "is intended to be a shared obligation of both parents," *Thronson v. Thronson*, 810 P.2d 428 (Utah App. 1991), and should be used to "assure the children a standard of living comparable to that which they would have experienced if no divorce had occurred." *Allred v. Allred,* 797 P.2d 1108, 1111 (Utah App. 1990) (citing *Ostler v. Ostler*, 789 P.2d 713, 716 (Utah App. 1990)). Both the custodial and non-custodial parents have the same duty to support their child. *Allred, supra,* at 1112 (Utah App. 1990).

Joint Physical Custody exists when a "child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support." *Utah Code Ann.* § 78B-12-102(14). In *Udy v. Udy*, 893 P.2d 1097 (Utah App.1995), Ms. Udy argued that the trial court had discretion to use the sole custody worksheet in determining child support because she was awarded "sole" custody of the parties' child. *Udy, supra,* at 1100:

> "Ms. Udy contends that the trial court did not err when it awarded child support based upon a sole custody worksheet. She argues that because the trial court awarded her 'sole' custody of Joshua and granted Mr. Udy only 'expanded' visitation, the court had the discretion to apply the sole custody worksheet. We are not persuaded. Labels do not control the child support determination. This court indicated in *Thronson v. Thronson*, 810 P.2d 428, 429 n. 1 (Utah App.1991), that the labels 'custody' and 'visitation' ascribed by the trial court are not as important as the description given by the court in defining their meaning in the context of a given case."

As is clearly and unequivocally set forth in *Udy*, "labels do not control the child support determination" and that, despite the "sole custody" label, Mr. Udy received visitation exceeding the joint physical custody threshold under § 78-45-2(10) [now § 78B-12-102(14)] requiring the court to use either the joint custody child support worksheet, or to justify any deviation through Findings of Fact. *See Utah Code Ann.* § 78B-12-202(3) (cited in *Udy* as *Utah Code Ann.* § 78-45-7(3) (Supp.1994)); *Udy*, at 1100 (citing *Allred,* at 1111 (Utah App. 1990)).

Findings of Fact must explain the reason for any deviation and why a guideline-based calculation is inequitable. *Udy*, at 1100. Findings must also be "sufficiently detailed and

include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." *Allred, supra,* at 1111 (Utah App. 1990) (quoting *Acton v. Deliran,* 737 P.2d 996, 999 (Utah 1987)). If the court's findings sufficiently rebut the guidelines, it must then consider the following and any other relevant factors in determining support: "(a) the standard of living and situation of the parties; (b) the relative wealth and income of the parties; (c) the ability of the obligor to earn; (d) the ability of the obligee to earn; (e) the ability of an incapacitated adult child to earn, or other benefits received by the adult child or on the adult child's behalf including Supplemental Security Income; (f) the needs of the obligee, the obligor, and the child; (g) the ages of the parties; and (h) the responsibilities of the obligor and the obligee for the support of others." *Utah Code Ann.* § 78B-12-202(3). In *Allred*, the lower court's findings were held insufficient because it lacked any findings regarding the total needed amount of monthly child support, and failed to explain how it ultimately decided support—instead the court relied on a figure the parties previously stipulated as a possible support amount. *Allred*, at 1111 (Utah App.1990).

None of the foregoing requirements were considered by Judge Henriod who did nothing more than to state the words "physical custody" and then set forth the parent-time plan which amounted to 160 overnights per year with Father. Attached as Addendum 2 is a true and correct copy of the transcript of the Judgment/Order proceedings and/or Findings of Fact and Judgment by Judge Henriod which states the following with regards to Custody and Parent-time:

> "Custody. Physical custody of Joey to the petitioner, joint legal custody. The advisory guidelines – and Counsel knows what that means, and you folks will get copies – will be part of this judgment.
>
> Parent time, the statutory holiday schedule, alternate weeks, Friday night, Saturday night and Sunday night, which

you've been doing. On the off week, two overnights. That will be Thursday and Friday so that Mr. Goldsmith can keep Joey longer on Friday because he doesn't work on Friday. So I'd say 4 o'clock he gets returned, unless there's a reason to do otherwise, and that's when he's not in school. Otherwise he gets returned to school in the morning."

Addendum 1: Judge's Ruling, page 4, lines 10 -21

Judge Henriod's again refers to "physical custody" a bit further into his Judgment, which further supports Father's position that the term does not impact or determine the manner in which the calculation of child support occurs.

"Now, having physical custody doesn't mean the physical custodian can change any parent time schedule or interfere with phone calls. It doesn't mean that you can block the defendant -- or respondent from taking Joey to visit his paternal parents which you did."

Addendum 1: Judge's Ruling, page 5, lines 4 - 8

If the custodial parent cannot change parent-time, then the custodial parent has no ability to change or adjust child support as child support is calculated by determining how many overnights per year a parent receives.

More incriminating is to look at the Child Support Calculators which are found on the Utah State Court's website where it is stated when to use the "Sole Custody Calculator" and when to use the "Joint Custody Calculator."

"Sole Custody Calculator

The Sole Custody Calculator is used when the non-custodial parent has fewer than 111 overnights a year with the children. If overnights

are not specified in your order, the Sole Custody Calculator is usually appropriate where the order refers to the custody arrangement as sole legal and sole physical or Joint legal and sole physical or joint legal with primary physical, or where one parent receives custody under an order that contains language similar to: permanent care control and custody of the children.

Joint Custody Calculator

The Joint Physical Custody calculator is used when each parent has more than 110 overnights a year with the children." [Emphasis]

Both dad and mom have more than 110 overnights per year in this case and, as such, the Joint Custody Calculator must be used.

When entering the Judgment regarding child support, Judge Henriod stated:

"Child support will be based upon imputed income to the petitioner of $5,800 a month. That's based upon the figures contained in affidavits that she's filed earlier in this case. I'm specifically finding voluntary unemployment, and also on her testimony today that she's not going to apply for just any job. The respondent's income will be $5,100 a month. This child support goes back to the date of the complaint.

It will be offset with -- I don't know what that number's going to be, **I didn't do a worksheet**, but it will be offset by the amounts paid by Mr. Goldsmith, which Ms. Larsen testified

were 200 a month from April through June, from July '08 to December '09, 300 a month, and $495 a month since January."

Addendum 1: Judge's Ruling, page 6, lines 1 - 13 [Emphasis added]

Judge Henriod made absolutely no findings for any deviation and why a guideline-based calculation would be inequitable. He stated what the income of the parties would be and further stated that he did not do a worksheet. The requirements of *Udy*, *Allred* and *Utah Code Ann.* 78B-12-202(3) were neither addressed, nor satisfied. As such, there can be no deviation from the guideline support.

The Honorable Judge Adkins did not attempt to change Judge Henriod's Judgment and he did not have the ability to do so at that time; Judge Adkins merely made a finding that because of the use of the terms "physical custody," then the Sole Physical Custody Worksheet should be used. This was clearly an error of law and an abuse of Judge Adkins discretion to change the law. No matter what term is used, the legal result is the same when one has 160 overnights per year: there exists a JOINT PHYSICAL CUSTODY relationship and **the Joint Custody Worksheet MUST, AS A MATTER OF LAW, be used.**

Any deviation from the above principles and law must be supported by the Findings of Fact with a finding of those elements and circumstances set forth in *Utah Code* 78B-12-202(3). Respondent first prepared the Findings of Fact as Ordered by Judge Henriod. See, Addendum 3. After the hearing with Judge Adkins, it was Ordered to change ¶ 19 of the Findings of Fact and Conclusions of Law, however, the court nonetheless has not included a specific explanation for its use of the Sole Custody Worksheet in calculating child support. See, Addendum 4. Respondent was awarded more than 110 overnights per year, granting him 30% or more of the year's total overnights, as was the case in *Udy*. Thus, because child

support was calculated using the Sole Custody Worksheet, the court should have made Findings of Fact and explained how these findings warrant deviation from the guidelines. *Udy v. Udy*, 893 P.2d 1097, 1100 (Utah App. 1995).

According to ¶ 19 of the Findings of Fact and Conclusions of Law prepared on May 23, 2011 and entered on June 20, 2011, the court has not included a specific explanation for its use of the Sole Custody Worksheet in calculating child support. Unless more detailed findings for this guideline departure appear in the court's Order, the court has Failed this requirement, making its Order erroneous and ripe for amendment and/or reversal. *Allred*, at 1111 (Utah App.1990).

8. CONCLUSION

A label of "sole" custody does not trigger the use of the Sole Custody Worksheet. A label of "physical custody" does not trigger the use of the Sole Custody Worksheet. And, visa versa. Instead, both parents have the same burden to provide child support, regardless of the label, and the amount of that burden is determined by the amount of overnights per year. Because Respondent has more than 30% of the overnights in a year, he is entitled to a child support calculation determined through the Joint Custody Worksheet, unless the trial court sets forth *specific* Findings that warrant deviation. The court in this case departed from the guidelines but failed to state specific reasons for such departure, which it could not have done because the original Findings of Fact were stated by Judge Henriod which are set forth in Addendum 2. If specific findings and related reasoning do not appear in the Order/Judgment, then no deviation from the guidelines are permissible.

For the reasons set forth above, it is respectfully submitted that the trial court [Judge Adkins] erred and abused its discretion in Ordering that the Sole Custody Worksheet must

be used. It is therefore requested that this matter be remanded with instructions to amend the Findings of Fact and Conclusions of Law and Judgment to reflect that the Joint Custody Worksheet be used.

DATED: November 22, 2011

Respectfully submitted,

By: _____
VERNON C. JOLLEY
Attorney for Respondent/Appellant,
WILLARD LEROY GOLDSMITH IV

CERTIFICATE OF COMPLIANCE

It is hereby certified that the word counter in WordPerfect which was used to create this Opening Brief indicates that the length of the Opening Brief is 3082 words.

DATED: November 22, 2011

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IN THE COURT OF APPEALS
STATE OF UTAH

RENEE SPALL-GOLDSMITH, Petitioner/Appellee, vs. WILLARD LEROY GOLDSMITH IV, Respondent/Appellant.	**CERTIFICATE OF SERVICE OF CD RE: SEARCHABLE PDF FILE OF APPELLANT'S BRIEF** Appellate Case No. 20110628 [District Court Case No. 084300172] [Trial Judge: STEPHEN L. HENRIOD] [Judge's Decision Appealed from: Honorable ROBERT ADKINS]

I hereby certify that on the date set forth below, I served a true and accurate copy of the CD that contained a searchable PDF file of the Appellant's Brief on the following named persons by depositing said document in the United States mail, postage prepaid, addressed as follows:

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DATED: 11/22/11

ADDENDUM

1. Statutes Referred to in Appellant's Brief

78B-12-102. Definitions.

As used in this chapter:

(1) "Adjusted gross income" means income calculated under Subsection 78B-12-204(1).

(2) "Administrative agency" means the Office of Recovery Services or the Department of Human Services.

(3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of Human Services, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.

(4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.

(5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Part 3, Tables.

(6) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.

(7) "Child" means:

(a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) a son or daughter of any age who is incapacitated from earning a living and, if able to provide some financial resources to the family, is not able to support self by own means.

(8) "Child support" means a base child support award, or a monthly financial award for uninsured medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, and child care costs.

(9) "Child support order" or "support order" means a judgment, decree, or order of a tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise which:

(a) establishes or modifies child support;

(b) reduces child support arrearages to judgment; or

(c) establishes child support or registers a child support order under Chapter 14, Uniform Interstate Family Support Act.

(10) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651 et seq.

(11) "Court" means the district court or juvenile court.

(12) "Guidelines" means the directions for the calculation and application of child support in Part 2, Calculation and Adjustment.

(13) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:

(a) all gain derived from capital assets, labor, or both, including profit gained through

sale or conversion of capital assets;

(b) interest and dividends;

(c) periodic payments made under pension or retirement programs or insurance policies of any type;

(d) unemployment compensation benefits;

(e) workers' compensation benefits; and

(f) disability benefits.

(14) "Joint physical custody" means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support.

(15) "Medical expenses" means health and dental expenses and related insurance costs.

(16) "Obligee" means an individual, this state, another state, or another comparable jurisdiction to whom child support is owed or who is entitled to reimbursement of child support or public assistance.

(17) "Obligor" means any person owing a duty of support.

(18) "Office" means the Office of Recovery Services within the Department of Human Services.

(19) "Parent" includes a natural parent, or an adoptive parent.

(20) "Split custody" means that each parent has physical custody of at least one of the children.

(21) "State" includes any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

(22) "Temporary" means a period of time that is projected to be less than 12 months in duration.

(23) "Third party" means an agency or a person other than the biological or adoptive parent or a child who provides care, maintenance, and support to a child.

(24) "Tribunal" means the district court, the Department of Human Services, Office of Recovery Services, or court or administrative agency of any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

(25) "Work-related child care costs" means reasonable child care costs for up to a full-time work week or training schedule as necessitated by the employment or training of a parent under Section 78B-12-215.

(26) "Worksheets" means the forms used to aid in calculating the base child support award.

Amended by Chapter 142, 2009 General Session

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78B-12-202. Determination of amount of support -- Rebuttable guidelines.

(1) (a) Prospective support shall be equal to the amount granted by prior court order unless there has been a substantial change of circumstance on the part of the obligor or obligee or adjustment under Subsection 78B-12-210(6) has been made.

(b) If the prior court order contains a stipulated provision for the automatic adjustment for prospective support, the prospective support shall be the amount as stated in the order, without a showing of a material change of circumstances, if the stipulated provision:

(i) is clear and unambiguous;

(ii) is self-executing;

(iii) provides for support which equals or exceeds the base child support award required by the guidelines; and

(iv) does not allow a decrease in support as a result of the obligor's voluntary reduction of income.

(2) If no prior court order exists, a substantial change in circumstances has occurred, or a petition to modify an order under Subsection 78B-12-210(6) has been filed, the court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.

(3) If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering all relevant factors, including but not limited to:

(a) the standard of living and situation of the parties;

(b) the relative wealth and income of the parties;

(c) the ability of the obligor to earn;

(d) the ability of the obligee to earn;

(e) the ability of an incapacitated adult child to earn, or other benefits received by the adult child or on the adult child's behalf including Supplemental Security Income;

(f) the needs of the obligee, the obligor, and the child;

(g) the ages of the parties; and

(h) the responsibilities of the obligor and the obligee for the support of others.

(4) When no prior court order exists, the court shall determine and assess all arrearages based upon the guidelines described in this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session
Download Code Section Zipped WordPerfect 78B12_020200.ZIP 2,752 Bytes

ADDENDUM

2. Transcript of Judge's Ruling of July 8, 2010

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

RENEE SPALL-GOLDSMITH, Petitioner, vs. WILLARD L. GOLDSMITH, IV, Respondent.	Case No. 084300172

Judge's Ruling
Electronically Recorded on
July 8, 2010

BEFORE: THE HONORABLE STEPHEN L. HENRIOD
Third District Court Judge

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PROCEEDINGS

(Electronically recorded on July 8, 2010)

THE COURT: Okay, everybody's here. We're on the record. I'm going to ask Mr. Jolley to prepare findings and a judgment, and I'm going to -- before I get into the direct rulings, I have a few comments. I found the petitioner's testimony to be evasive manipulation in attempt to continue to be over-controlling. I believe she's been over-controlling through the entire period of the parties' separation, and would like to continue to do so. If she does, that will be contrary to the best interest of Joey. On the contrary, I found the respondent's testimony to be straightforward and credible.

A word about the motion for DNA testing. That motion was morally and ethically wrong, and potentially extremely harmful to Joey and to the respondent. It had -- if it had been done, it would have been an attempt to bastardize a child, and no parent should ever want to do that to a child. This is -- this is again for -- I missed your current last name.

MS. LARSEN: Larsen.

THE COURT: Larsen. This is mostly for Ms. Larsen. Unfortunately, maybe for you and certainly for me, I am now in charge of your parent time situation, because you folks haven't worked it as well as you should have, and that's mostly due to Ms. Larsen. You cannot change Court orders regarding parent time, period, even though you're going to have physical

custody. Do you understand what I'm saying?

MS. LARSEN: Yes.

THE COURT: If you decide it's not going to be -- excuse me -- good for Joey to spend time with his father for whatever reason, and he comes back here to Court, you will go to jail. That's a promise. You don't interfere.

You don't interfere with telephone time either, and what you testified you did is interfering with telephone time. He calls, you miss the call, you get the voice message, you say, "Joey, it's time to call your father back now," and you hand him the phone.

You do not give a 7-year old the option to do something different. When he's 15, that will be different, but a 7-year-old doesn't get to decide whether he goes for parent time or not. That applies to you, sir, too. Doesn't get to decide whether he makes a phone call or not. He doesn't. That puts way too much pressure on the child, and it should never happen.

Joey and his dad can talk as many times as they want during the day, as long as it's not during sleeping time, and it isn't what we'd call harassment. I think everybody except possibly Ms. Larsen understands what that means. Just reasonable times when you need to talk, or want to talk.

Now, football and golf are wonderful activities. They are in the best interest of the child. Neither parent is ever ordered to pay the cost of that kind of activity. Good parents

who are concerned about the welfare of their child will share those expenses, all other things being equal; but there's going to be no Court order beyond the child support. That's something you have to work out voluntarily.

I found insufficient evidence to make a finding of fact that the $20,000 went into the house as a down payment, or even that it came from the personal injury settlement. I also found insufficient evidence to make a finding of fact that there is any equity in the marital home.

Custody. Physical custody of Joey to the petitioner, joint legal custody. The advisory guidelines -- and Counsel knows what that means, and you folks will get copies -- will be part of this judgment.

Parent time, the statutory holiday schedule, alternate weeks, Friday night, Saturday night and Sunday night, which you've been doing. On the off week, two overnights. That will be Thursday and Friday so that Mr. Goldsmith can keep Joey longer on Friday because he doesn't work on Friday. So I'd say 4 o'clock he gets returned, unless there's a reason to do otherwise, and that's when he's not in school. Otherwise he gets returned to school in the morning.

Don't enroll Joey in activities that interfere with the other parent's time without the agreement of the other parent, and without attempting -- you should attempt to accommodate what Joey wants and what's good for him. I think foot-

ball, soccer, golf, any of that is good for him, but it has to be done jointly, and has to be done with Joey's welfare in mind.

Now, having physical custody doesn't mean the physical custodian can change any parent time schedule or interfere with phone calls. It doesn't mean that you can block the defendant -- or respondent from taking Joey to visit his paternal parents which you did.

Frankly, given the testimony I heard about the dysfunctional relationship between Ms. Larsen and her parents, I can't see how she can criticize the relationship between Joey and any other grandparents. Again, you don't give a 7-year-old a choice about spending parent time or making telephone calls or anything else. You tell him what he needs to do.

Both parents need to be flexible. They need to accommodate Joey and the other parent. Means if you can't decide, the schedule controls; but if you can agree on other changes, that will be in Joey's best interest and you should try to do that.

You need to understand, the older he gets the more flexible you've got to become. At 7 you can control him. At 15 he's going to be controlling you. He's going to tell you he's too busy, he's got things to do at school; and if you want him to continue to have a good relationship with him, you're just going to have to roll with it. That's the way it works.

Child support will be based upon imputed income to the petitioner of $5,800 a month. That's based upon the figures contained in affidavits that she's filed earlier in this case. I'm specifically finding voluntary unemployment, and also on her testimony today that she's not going to apply for just any job. The respondent's income will be $5,100 a month. This child support goes back to the date of the complaint.

It will be offset with -- I don't know what that number's going to be, I didn't do a worksheet, but it will be offset by the amounts paid by Mr. Goldsmith, which Ms. Larsen testified were 200 a month from April through June, from July '08 to December '09, 300 a month, and $495 a month since January.

If the parties have evidence to prove that that was different, then whether it benefits either party, they are welcome to provide that information to Counsel and make that adjustment. Any payments that Mr. Goldsmith made to things like football or golf will be counted as child support for purposes of determining what that arrearage amount might be.

As far as the real property is concerned, anything that went into the house was comingled, became joint property. As I said before, I don't have enough evidence to make any finding that there's anything in terms of equity in this home. The home is awarded to the petitioner -- or to the respondent, and he assumes all debt incurred with it.

Marital debt -- we're talking about the credit cards -- the amounts will be established either as of the day of divorce, April of '09 or today with respect to each amount, whichever is lower. So if they've been paid down since April of '09, the parties -- Mr. Goldsmith, who I guess would have paid it down, gets the benefit of that. I guess it would accrue to Ms. Larsen, because I'm going to order that that is marital debt, and the parties will share it equally.

Now, the way you handle that is up to Counsel. You can offset it. If there's going to be an arrearage against Mr. Goldsmith, for instance, on the child support, that can be offset on the marital debt. The IRS is a joint debt. The petitioner is awarded the Volvo, subject to its indebtedness.

Counsel, anything I've missed?

MR. JOLLEY: No, your Honor.

THE COURT: Okay, thank you. Court's adjourned.

(Judge's ruling concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these proceedings.

That I have authorized Wendy Haws to prepare said transcript, as an independent contractor working under my license as a certified court reporter appropriately authorized under Utah statutes.

That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

Wendy Haws
Certified Court Transcriber

WITNESS MY HAND AND SEAL this 4th day of August 2011.

My commission expires:
February 24, 2012

Beverly Lowe
NOTARY PUBLIC
Residing in Utah County

BEVERLY LOWE
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 572818
COMM. EXP. 01-30-2012

ADDENDUM

3. Findings of Fact and Conclusions of Law prepared for Judge Henriod's signature

VERNON C. JOLLEY 6906
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9710 South 700 East, Suite 111
Sandy, Utah 84070
Fax: (801) 495-1444
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(801) 495-1442

Attorney for Respondent: WILLARD LEROY GOLDSMITH IV

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR TOOELE COUNTY, STATE OF UTAH

RENEE SPALL-GOLDSMITH, Petitioner, vs. WILLARD LEROY GOLDSMITH IV, Respondent.	**FINDINGS OF FACT AND CONCLUSIONS OF LAW** Case No. 084300172 Judge: HENRIOD Commissioner: TACK

This matter was tried to the bench on the 8th of July, 2010 on the Petitioner's Complaint and Respondent Counterclaim for Divorce. Petitioner was represented by OLIVIA D. UITTO and Respondent was represented by VERNON C. JOLLEY. The Court heard testimony from the Petitioner and the Respondent, various other witnesses, received exhibits and heard arguments from counsel. After a short recess, the Court made the following Findings of Fact, Orders, Judgments and Conclusions of Law.

FINDINGS OF FACT

The Court makes the following Findings of Fact to be in the best interests of the parties and their minor child Joey:

INITIAL FINDINGS OF FACT

1. The Petitioner was evasive, manipulative and attempted to continue to be over-controlling as the custodial parent. If she continues in such actions, it will be against the best

interests of Joey.

2. Respondent was straight-forward and credible.

3. Petitioner's request for DNA testing was morally and ethically wrong. It was also potentially extremely harmful to Joey and to Respondent. It was an attempt to bastardize the child and no parent should ever want to do that.

4. Petitioner has changed court Orders concerning parent-time and has changed court Orders concerning parent-time. Petitioner has interfered with parent-time and is not to interfere with parent-time or telephone time. If she does, she will go to jail.

5. Petitioner has given Joey the option of whether Joey will call back his father and she shall not give Joey the option whether to call back his father or not.

6. The Court finds that Respondent and Joey may talk as many times as they want during the day as long as it is reasonable and not harassment to Petitioner or during sleeping time.

7. Football and golf are wonderful activities and are in the best-interests of the child. Neither parent is ordered to pay for those activity. Good parents will share these expenses. But there is no court Order to pay these expenses.

8. There was insufficient evidence to find that $20,000 went into the house as a down payment or that it came from Petitioner's personal injury settlement.

9. The Court finds that there is no equity in the home.

CUSTODY

10. With regards to custody, the court finds that it would be in the best interests of Joey that Petitioner will have physical custody of the minor child. The court finds that it would be in the best interests of Joey that Petitioner and Respondent will have Joint Legal Custody of the minor child.

11. The Court finds that it is in the best interest of the parties and Joey that the Advisory

Guidelines as found in *Utah Code Ann.* 30-3-2 and 30-3-3 be implemented and will be part of the court's Order.

PARENT-TIME

12. The court finds the following parent-time schedule to be in the best interests of the minor child. Parent-time shall follow the statutory holiday schedule. The parties shall have alternating weekends and Respondent will have two overnights on off weeks, that is, during those weeks where Petitioner has the following weekend with Joey. These additional parent-time days will be Thursdays and Fridays, which means that Respondent will pick-up Joey on Wednesdays and return on Fridays prior to Petitioner's scheduled weekend parent-time thereby resulting in Respondent having Wednesday and Thursday nights with Joey on the weeks following Respondent's weekend parent-time.

13. The court finds that the parties shall not enroll Joey in activities that interfere with other parent's time without consulting the other parent.

14. The court finds that activities such as golf, football, and soccer are good for Joey, but these activities must be done jointly and with Joey's welfare in mind.

15. The court finds that physical custody does not mean that you can change parent-time or phone schedules. The Petitioner cannot block Respondent from taking Joey to paternal grandparents. Joey does not get a choice. Joey needs to be told what to do and that parent-time is important.

16. The court finds that parents shall be flexible and agree on changes that would be the best interests of Joey. The older Joey gets, the more flexible the parents need to become. At seven years old, Joey is easy to control. At fifteen years old, he will control the parties.

CHILD SUPPORT

17. For computation of child support, the court finds evidence sufficient to imputed $5,800 per month to the Petitioner. This is based upon figures from affidavits from Petitioner. The

Court specifically finds voluntary unemployment for the Petitioner and based on testimony that she is not just going to apply "for just any job."

18. The Court finds the Respondent's income to be $5,100 per month.

19. The Court finds that child support is retroactive to the date of the Complaint. It shall be offset by amounts previously paid by Respondent Lee Goldsmith. These amounts were: $200 per month for April through June of 2008, $300 per month for July 2008 through December 2009 and $495 per month since January 2010.

20. If parties have evidence that this is different they can provide that information to counsel and make an adjustment for purposes of child support.

21. Any past payments for things like football or golf that Respondent may have paid may be counted towards child support.

PROPERTY

22. The court finds that anything that came into the house became co-mingled and joint-property.

23. The Court finds that there is no equity in home.

24. The court finds that the home should be awarded to Respondent and that he should assume all debt associated with the home.

MARITAL DEBT

25. The Court finds that amount of credit card debt will be established from date of divorce, May 8, 2009 or July 8, 2010, whichever is lower. The court finds that the credit card debt is marital debt and shall be divided equally. Counsel for both sides can determine how to handle this division. It can be offset with any arrears of the Respondent.

26. The Court finds that the IRS debt is a joint debt.

27. The Court finds that the Petitioner should be awarded the Volvo.

CONCLUSIONS OF LAW

1. The Court concludes that the parties, having previously been granted a Bifurcated Decree of Divorce, are still subject to the jurisdiction of the Court as set out above under the Court's Findings of Facts and that the Findings of Fact as set forth above are consistent with law and equity.

2. The Court concludes that the terms, conditions and Findings on the matters tried on the Bifurcated Decree of Divorce are in the best interests of the parties and their minor child, that the terms are fair and reasonable, and all other issues of dispute have been resolved with the Court pursuant to the above Findings of Fact.

SIGNED and DATED this ____ day of _____, 2010.

BY THE COURT

_____
THE HONORABLE JUDGE HENRIOD
Third District Court Judge

Approval as to form

_____
Olivia D. Uitto

NOTICE OF INTENT TO SUBMIT FOR SIGNATURE

You are hereby given notice, pursuant to Rule 7(f), Utah Rules of Civil Procedure, that they undersigned attorney will submit the above foregoing order for signature by the court, upon the expiration of 5 days from the date of this notice, plus 3 days for mailing, unless written objection is filed prior to that time.

Dated: September 15, 2010

_____
VERNON C. JOLLEY

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I served a true and accurate copy of the foregoing document identified as **FINDINGS OF FACT AND CONCLUSIONS OF LAW** on the following named persons by depositing said document in the United States mail, postage prepaid, addressed as follows:

Olivia D. Uitto, Ph.D.
Attorney at Law
P.O. Box 711872
Salt Lake City, UT 84171

DATED: September 15, 2010

By:_____
VERNON C. JOLLEY

ADDENDUM

4. Modified Findings of Fact and Conclusions of Law Ordered by Judge Adkins and signed by Judge Adkins on June 20, 2011

VERNON C. JOLLEY 6906
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Telephone: (801) FATHERS
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Attorney for Respondent: WILLARD LEROY GOLDSMITH IV

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR TOOELE COUNTY, STATE OF UTAH

RENEE SPALL-GOLDSMITH, Petitioner, vs. WILLARD LEROY GOLDSMITH IV, Respondent.	**FINDINGS OF FACT AND CONCLUSIONS OF LAW** Case No. 084300172 Judge: ADKINS Commissioner: TACK

This matter was tried to the bench on the 8th of July, 2010 on the Petitioner's Complaint and Respondent Counterclaim for Divorce. Petitioner was represented by OLIVIA D. UITTO and Respondent was represented by VERNON C. JOLLEY. The Court heard testimony from the Petitioner and the Respondent, various other witnesses, received exhibits and heard arguments from counsel. After a short recess, the Court made the following Findings of Fact, Orders, Judgments and Conclusions of Law.

FINDINGS OF FACT

The Court makes the following Findings of Fact to be in the best interests of the parties and their minor child Joey:

INITIAL FINDINGS OF FACT

1. The Petitioner was evasive, manipulative and attempted to continue to be over-controlling as the custodial parent. If she continues in such actions, it will be against the best

interests of Joey.

2. Respondent was straight-forward and credible.

3. Petitioner's request for DNA testing was morally and ethically wrong. It was also potentially extremely harmful to Joey and to Respondent. It was an attempt to bastardize the child and no parent should ever want to do that.

4. Petitioner has changed court Orders concerning parent-time and has changed court Orders concerning parent-time. Petitioner has interfered with parent-time and is not to interfere with parent-time or telephone time. If she does, she will go to jail.

5. Petitioner has given Joey the option of whether Joey will call back his father and she shall not give Joey the option whether to call back his father or not.

6. The Court finds that Respondent and Joey may talk as many times as they want during the day as long as it is reasonable and not harassment to Petitioner or during sleeping time.

7. Football and golf are wonderful activities and are in the best-interests of the child. Neither parent is ordered to pay for those activity. Good parents will share these expenses. But there is no court Order to pay these expenses.

8. There was insufficient evidence to find that $20,000 went into the house as a down payment or that it came from Petitioner's personal injury settlement.

9. The Court finds that there is no equity in the home.

CUSTODY

10. With regards to custody, the court finds that it would be in the best interests of Joey that Petitioner will have physical custody of the minor child. The court finds that it would be in the best interests of Joey that Petitioner and Respondent will have Joint Legal Custody of the minor child.

11. The Court finds that it is in the best interest of the parties and Joey that the Advisory

Guidelines as found in *Utah Code Ann.* 30-3-2 and 30-3-3 be implemented and will be part of the court's Order.

PARENT-TIME

12. The court finds the following parent-time schedule to be in the best interests of the minor child. Parent-time shall follow the statutory holiday schedule. The parties shall have alternating weekends and Respondent will have two overnights on off weeks, that is, during those weeks where Petitioner has the following weekend with Joey. These additional parent-time days will be Thursdays and Fridays, which means that Respondent will pick-up Joey on Wednesdays and return on Fridays prior to Petitioner's scheduled weekend parent-time thereby resulting in Respondent having Wednesday and Thursday nights with Joey on the weeks following Respondent's weekend parent-time.

13. The court finds that the parties shall not enroll Joey in activities that interfere with other parent's time without consulting the other parent.

14. The court finds that activities such as golf, football, and soccer are good for Joey, but these activities must be done jointly and with Joey's welfare in mind.

15. The court finds that physical custody does not mean that you can change parent-time or phone schedules. The Petitioner cannot block Respondent from taking Joey to paternal grandparents. Joey does not get a choice. Joey needs to be told what to do and that parent-time is important.

16. The court finds that parents shall be flexible and agree on changes that would be the best interests of Joey. The older Joey gets, the more flexible the parents need to become. At seven years old, Joey is easy to control. At fifteen years old, he will control the parties.

CHILD SUPPORT

17. For computation of child support, the court finds evidence sufficient to imputed $5,800 per month to the Petitioner. This is based upon figures from affidavits from Petitioner. The

Court specifically finds voluntary unemployment for the Petitioner and based on testimony that she is not just going to apply "for just any job."

18. The Court finds the Respondent's income to be $5,100 per month.

19. The Court finds that the Child Support Obligation Worksheet for Sole Custody is appropriate in this case. A copy is attached hereto as Exhibit 1. Based thereon, the base child support amount payable by Respondent to Petitioner is $509.00 per month. The Court finds that child support is retroactive to the date of the Complaint. It shall be offset by amounts previously paid by Respondent Lee Goldsmith. These amounts were: $200 per month for April through June of 2008, $300 per month for July 2008 through December 2009 and $495 per month since January 2010.

20. If parties have evidence that this is different they can provide that information to counsel and make an adjustment for purposes of child support.

21. Any past payments for things like football or golf that Respondent may have paid may be counted towards child support.

PROPERTY

22. The court finds that anything that came into the house became co-mingled and joint-property.

23. The Court finds that there is no equity in home.

24. The court finds that the home should be awarded to Respondent and that he should assume all debt associated with the home.

MARITAL DEBT

25. The Court finds that amount of credit card debt will be established from date of divorce, May 8, 2009 or July 8, 2010, whichever is lower. The court finds that the credit card debt is marital debt and shall be divided equally. Counsel for both sides can determine how to handle this division. It can be offset with any arrears of the Respondent.

26. The Court finds that the IRS debt is a joint debt.

27. The Court finds that the Petitioner should be awarded the Volvo.

CONCLUSIONS OF LAW

1. The Court concludes that the parties, having previously been granted a Bifurcated Decree of Divorce, are still subject to the jurisdiction of the Court as set out above under the Court's Findings of Facts and that the Findings of Fact as set forth above are consistent with law and equity.

2. The Court concludes that the terms, conditions and Findings on the matters tried on the Bifurcated Decree of Divorce are in the best interests of the parties and their minor child, that the terms are fair and reasonable, and all other issues of dispute have been resolved with the Court pursuant to the above Findings of Fact.

SIGNED and DATED this ____ day of _____, 2011.

BY THE COURT

_____
THE HONORABLE JUDGE ADKINS
Third District Court Judge

Approval as to form

_____
Olivia D. Uitto

NOTICE OF INTENT TO SUBMIT FOR SIGNATURE

You are hereby given notice, pursuant to Rule 7(f), Utah Rules of Civil Procedure, that they undersigned attorney will submit the above foregoing order for signature by the court, upon the expiration of 5 days from the date of this notice, plus 3 days for mailing, unless written objection is filed prior to that time.

Dated: May 23, 2011

_____
John J. Diamond

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I served a true and accurate copy of the foregoing document identified as **FINDINGS OF FACT AND CONCLUSIONS OF LAW** on the following named persons by depositing said document in the United States mail, postage prepaid, addressed as follows:

Olivia D. Uitto, Ph.D.
Attorney at Law
P.O. Box 711872
Salt Lake City, UT 84171

DATED: May 23, 2011

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I served a true and accurate copy of the document described as APPELLANT'S OPENING BRIEF on the following named persons by depositing said document in the United States mail, postage prepaid, addressed as follows:

OLIVIA D. UITTO, Ph.D. Attorney at Law P.O. Box 711872 Salt Lake City, UT 84171	Two (2) Copies Attorney for Petitioner/Appellee

DATED: 11/22/11

VERNON C. JOLLEY